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PAGE 01 STATE 207443
ORIGIN L-03

INFO OCT-01 ARA-10 ISO-00 SCA-01 DHA-05 SNM-02 JUSE-00
DEAE-00 SCS-03 H-01 /026 R

DRAFTED BY L/CA:REDALTON:JBM
APPROVED BY L/CA:REDALTON
CA - B. WATSON (SUBS)
L/SFP - L. FIELDS (SUBS)
ARA/AND/B - D. TORYLA (SUBS)
-----120973 310007Z /72
P 302149Z AUG 77
FM SECSTATE WASHDC
TO AMEMBASSY LA PAZ PRIORITY

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E.O. 11652: N/A

TAGS: CASC

SUBJECT: ASSISTANT SECRETARY WATSON'S VISIT: LEGAL ISSUES
RELATING TO PRISONERS

1. DEPARTMENT APPRECIATES EMBASSY'S PROMPT FURNISHING OF
LEGAL MATERIALS FOR ANALYSIS. BASED ON DEPARTMENT'S PRE-
LIMINARY REVIEW WE BELIEVE THAT ASSISTANT SECRETARY WATSON
MIGHT RAISE A NUMBER OF ISSUES WITH BOLIVIAN OFFICIALS
DURING HER VISIT. IN ORDER TO REFINE THE ISSUES DEPARTMENT
WOULD APPRECIATE LEGAL ADVISERS EXPLORING MATTERS DISCUSSED
IN THIS CABLE AND ANY RELATED ISSUES IN ORDER THAT THEY
MIGHT BRIEF ASSISTANT SECRETARY WATSON ON ARRIVAL.

2. OPENING THE CODE OF CRIMINAL PROCEDURES AND THE LAW ON
THE EXECUTION OF SENTENCES TO NARCOTICS CASES

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REVIEW OF 1976 LAW ON NARCOTICS OFFENSES INDICATES IT LESS
CATEGORICAL IN REJECTING FRAMEWORK OF EXISTING LAW THAN
1973 LAW THAT IT REPLACED. DEPARTMENT UNDERSTANDS THAT
MORRERO'S HABEAS CORPUS DECISION PROCEEDED FROM THE PREMISE
THAT PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE
(PROCEDIMIENTO PENAL) AND THE LAW ON EXECUTION OF SENTENCES
WERE APPLICABLE TO NARCOTICS CASES UNLESS THE 1976 LAW

SPECIFICALLY PROHIBITED THEIR APPLICABILITY. LEGAL ADVISERS ARE REQUESTED TO ASCERTAIN WHETHER THIS UNDERSTANDING IS CORRECT AND, IF SO, WHAT LEGAL TOOLS NOT HERETOFORE USED IT MAKES AVAILABLE TO PRISONERS SEEKING DEFENSE FROM CHARGES, EARLY ACCESS TO LAWYERS, AND RELEASE ON BAIL.

3. MORRERO HAS INFORMED DEPARTMENT THAT ARTICLE 99 OF NARCOTICS LAW DOES NOT DENY BAIL IN NARCOTICS CASES. HE STATES THAT DRAFTING IS POOR AND THAT MEANING OF ARTICLE IS UNCLEAR. WE WOULD APPRECIATE RECEIVING ADVICE OF LEGAL ADVISERS ON THIS PROPOSITION.

4. PAROLE. PARAS 5 THROUGH 8 SUMMARIZE THE CONCLUSIONS REACHED BY THE DEPARTMENT IN ITS REVIEW OF BOLIVIAN LAW RELATING TO PAROLE. WE WOULD APPRECIATE IT IF THE LEGAL ADVISERS WOULD REVIEW THE SUMMARY AND INDICATE WHETHER OR NOT IT ACCURATELY REFLECTS BOLIVIAN LAW. IF SO, SHOULD WE NOT URGE THAT AMERICAN PRISONERS WHO HAVE COMPLETED TWO-THIRDS OF THEIR SENTENCES AND OTHERWISE MEET THE REQUIREMENTS OF BOLIVIAN LAW BE GRANTED PAROLE? IN ANSWERING THIS QUESTION WE WILL NEED TO KNOW WHETHER IN SUCH CIRCUMSTANCES BOLIVIANS ARE GRANTED PAROLE. IF THEY ARE, THERE WOULD APPEAR TO BE A BASIS FOR ARGUING THAT FAILURE TO GRANT PAROLE TO AMERICANS BECAUSE THEY ARE ALIENS IS DISCRIMINATORY TREATMENT.

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5. PROVISIONS FOR PAROLE ARE FOUND IN THE LAW ON THE EXECUTION OF SENTENCE AND THE PENITENTIARY SYSTEM (LEY DE EJECUCION DE PENAS Y SISTEMA PENITENCIARIO), A LAW WHICH HAS AS A CENTRAL PURPOSE THE REHABILITATION OF THE OFFENDER AND HIS REINTEGRATION AS A PRODUCTIVE MEMBER OF SOCIETY (SEE ARTICLES 2, 3 AND 4). ARTICLE 102 OF THE NARCOTICS LAW MAKES PAROLE UNDER THE EXECUTION OF SENTENCE LAW APPLICABLE TO NARCOTICS CASES.

6. CHAPTER III OF THE LAW DEALS WITH THE SERVING OF SENTENCES. A FOUR-STAGE REGIME IS ESTABLISHED BY ARTICLE 22. STAGES ONE AND TWO PROVIDE FOR OBSERVATION, CLASSIFICATION AND TREATMENT OF THE PRISONER AND HIS SOCIAL READAPTATION WITHIN THE PRISON. PRE-PAROLE IS A THIRD STAGE; THE FINAL STAGE IS PAROLE. DETAILED REQUIREMENTS FOR PAROLE ARE SPELLED OUT IN ARTICLE 93 OF THE LAW ON EXECUTION OF SENTENCES AND IN ARTICLES 66-69 OF THE PENAL CODE.

7. ARTICLE 93 OF THE LAW ON EXECUTION OF SENTENCES PROVIDES THAT A PERSON SHALL BE ELIGIBLE FOR PAROLE AFTER HE

HAS SERVED TWO-THIRDS OF HIS SENTENCE PROVIDED THAT THE JUDGE IN HIS CASE RECEIVES A REPORT FROM THE APPROPRIATE OFFICIALS INDICATING THAT FOUR REQUIREMENTS HAVE BEEN MET; NAMELY, THAT THE PRISONER HAS PASSED THROUGH THE THREE PREVIOUS STAGES OF INCARCERATION MENTIONED IN ARTICLE 22, THAT HE HAS DEMONSTRATED APTITUDE AND INCLINATION (APTITUD Y HABITOS) FOR WORK, HAS DISCHARGED HIS CIVIL RESPONSIBILITY OR POSTED A BOND, REAL OR PERSONAL, AND THAT HE IS LIKELY TO BE ON GOOD BEHAVIOR AND WILL SUBMIT HIMSELF TO THE SUPERVISION OF THE PROBATION OFFICER (JUEZ DE VIGILANCIA) DURING THE REMAINDER OF HIS SENTENCE.

8. THE CONDITIONS OF ARTICLE 93 OF THE LAW ON THE EXECUTED LIMITED OFFICIAL USE

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TION OF SENTENCES ARE SUPPLEMENTED BY ARTICLES 66-69 OF THE PENAL CODE. THE MOST TROUBLESOME OF THE LATTER ARTICLES FROM OUR POINT OF VIEW IS ARTICLE 68, WHICH PROVIDES FOR REVOCATION OF PAROLE FOR PERSONS WHO DO NOT COMPLY WITH THE CONDITIONS ESTABLISHED FOR THEIR PAROLE.

9. MR. MORRERO STATED THAT AT THE PRE-PAROLE STAGE (ARTICLE 22 (C) OF THE LAW ON THE EXECUTION OF SENTENCES) BOLIVIANS ARE GIVEN WORK PERMITS THAT ENTITLE THEM TO LEAVE THE PRISON DURING CERTAIN HOURS AND TO BE GAINFULLY EMPLOYED. HE STATED THAT AMERICANS AND OTHER FOREIGN NATIONALS ARE NOT TREATED IN THE SAME WAY SINCE THE BOLIVIAN GOVERNMENT DECLINES TO ISSUE THEM PERMISSION TO WORK. WE WOULD APPRECIATE THE ADVICE OF THE LEGAL ADVISERS AS TO WHETHER MR. MORRERO'S STATEMENTS ARE ACCURATE AND, IF SO, WHETHER THERE IS ANY WAY IN WHICH THE BOLIVIANS COULD BE PREVAILED UPON TO GRANT WORK PERMITS TO AMERICANS AT THE PRE-PAROLE STAGE.

10. WITH RESPECT TO PAROLE, A QUESTION ARISES WHETHER THE BOLIVIANS WOULD CONSENT TO AN AMERICAN WHO HAD BEEN ADMITTED TO PAROLE RETURNING TO THE UNITED STATES DURING THE FINAL PORTION OF HIS SENTENCE IF WE WERE TO MAKE ARRANGEMENTS FOR HIS SUPERVISION BY PROBATION OFFICERS IN THE UNITED STATES. WITHIN THE UNITED STATES, PROBATION AUTHORITIES OF ONE STATE FREQUENTLY AGREE TO PERMIT A PAROLLED PRISONER TO MOVE TO ANOTHER STATE ON CONDITION THAT THE PRISONER VOLUNTARILY UNDERTAKE TO ACCEPT SUPERVISION OF PAROLE AUTHORITIES IN THE SECOND STATE. WE COULD PROBABLY WORK OUT A SIMILAR SYSTEM FOR FEDERAL PROBATION OFFICERS TO SUPERVISE BOLIVIAN PRISONERS WHO RETURNED TO THE UNITED STATES DURING THE FINAL STAGE OF THEIR SENTENCE. WE WOULD APPRECIATE THE REACTIONS OF THE LEGAL ADVISERS AS LIMITED OFFICIAL USE

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TO THE PROBABLE RECEPTIVITY OF THE BOLIVIANS TO SUCH A
PROPOSAL. CHRISTOPHER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MINISTERIAL VISITS, PRISONERS WELFARE
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Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE207443
Document Source: CORE
Document Unique ID: 00
Drafter: REDALTON:JBM
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770314-0073
Format: TEL
From: STATE
Handling Restrictions: n/a
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Legacy Key: link1977/newtext/t1977087/aaaaaffm.tel
Line Count: 177
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 4238105c-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
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Review Event:
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Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1624186
Secure: OPEN
Status: NATIVE
Subject: ASSISTANT SECRETARY WATSON'S VISIT: LEGAL ISSUES RELATING TO PRISONERS
TAGS: CASC, PGOV, US, BL, (WATSON)
To: LA PAZ
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/4238105c-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009